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TO RUEHC/SECSTATE WASHDC PRIORITY  
INFO RUCNMEM/EU MEMBER STATES COLLECTIVE PRIORITY  
RUEHAK/AMEMBASSY ANKARA PRIORITY  
RUEHSW/AMEMBASSY BERN PRIORITY  
RUEHDJ/AMEMBASSY DJIBOUTI PRIORITY  
RUEHKL/AMEMBASSY KUALA LUMPUR PRIORITY  
RUEHKV/AMEMBASSY KYIV PRIORITY  
RUEHMO/AMEMBASSY MOSCOW PRIORITY  
RUEHNR/AMEMBASSY NAIROBI PRIORITY  
RUEHOT/AMEMBASSY OTTAWA PRIORITY  
RUEHRH/AMEMBASSY RIYADH PRIORITY  
RUEHYN/AMEMBASSY SANAA PRIORITY  
RUEHUL/AMEMBASSY SEOUL PRIORITY  
RUEHSQ/AMEMBASSY SKOPJE PRIORITY  
RUEHKO/AMEMBASSY TOKYO PRIORITY  
RULSJGA/COMDT COGARD WASHDC PRIORITY  
RHMFIS/CDR USEUCOM ALT SHAPE BE PRIORITY  
RUEAWJA/DEPT OF JUSTICE WASHDC PRIORITY  
RUEPGBA/CDR USEUCOM INTEL VAIHINGEN GE PRIORITY  
RXFPSH/SHAPE SHAPE BE PRIORITY  
RHMFIS/CDR USEUCOM LIAISON CELL SHAPE BE PRIORITY  
RUEATRS/DEPT OF TREASURY WASHDC PRIORITY  
RUCBACM/CDR USJFCOM NORFOLK VA PRIORITY  
RUEKJCS/SECDEF WASHDC PRIORITY  
RHEFDHN/DIA DH WASHINGTON DC PRIORITY  
RUEAIIA/CIA WASHINGTON DC PRIORITY  
RHEFNGA/CDR NGIC CHARLOTTESVILLE VA PRIORITY  
RHMFIS/CDR USSOCOM MACDILL AFB FL PRIORITY  
RUEKJCS/CJCS WASHINGTON DC PRIORITY  
RUEKJCS/DOD WASHDC PRIORITY  
RUDKSR/EUCOM PLANS AND ANALYSIS STAFF STUTTGART GE PRIORITY  
RUEKJCS/Joint STAFF WASHINGTON DC PRIORITY  
RUCPDOC/DEPT OF COMMERCE WASHDC PRIORITY  
RHMFIS/CDR USCENTCOM MACDILL AFB FL PRIORITY  
RUEWMFC/HQ USAFRICOM STUTTGART GE PRIORITY  
RUEHNO/USMISSION USNATO PRIORITY  
RUCNDT/USMISSION USUN NEW YORK PRIORITY  
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C O N F I D E N T I A L SECTION 01 OF 03 BRUSSELS 001937

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E.O. 12958: DECL: 12/16/2018  
TAGS: PREL MOPS PBTS PHSA PTER XA XW SO EUN  
SUBJECT: EU LAUNCHES ANTI-PIRACY OPERATION DESPITE UNRESOLVED LEGAL ISSUES

REF: USEU BRUSSELS 1745

Classified By: Pol M-C Chris Davis for reasons 1.4 (b) and (d).

¶1. (C//NF) Summary: The EU has launched its counter-piracy operation ATALANTA and has begun escorts off the coast of Somalia. USEU contacts suggest the force will comprise four to five ships on station throughout the year, plus three maritime patrol aircraft and supply ship support. While ten third countries were reportedly considering contributions to the operation, only Switzerland has volunteered to contribute special operations forces. At the request of Member States, the operation's rules of engagement are quite robust, allowing for forced boarding, the use of force in self-defense and rescue of pirate victims and opposed boarding. A number of legal issues remain unresolved, however, including operating in territorial waters, status of forces agreements, embarking armed personnel aboard merchant vessels, and what to do with persons under control. End

Summary.

#### Operational Details

¶2. (C/NF) According to Atalanta's Operational Plan the minimum number of ships required in the AOR is three. Didier Lenoir, Head of the Operations and Exercises Unit in the EU Council Secretariat's DG E VIII, told PolOff on December 10 that the operation would consist of four to five frigates and three maritime patrol aircraft on an almost permanent basis. A supply ship would also be assured throughout the year, although supply ships would come and go as necessary.

¶3. (C//NF) Lenoir said that ten third countries were considering contributions to ATALANTA, and he drew our attention to a third-country force generation conference, which was subsequently held in Northwood, UK on December 16. At our December 10 meeting, Lenoir hinted that Japan was the most likely third country contributor; however, the Japanese mission's Yuji Yamamoto told PolOff on December 12 that Japan had not made any firm decisions about participation. Yamamoto said the EU was then proposing to incorporate Japanese medics, for instance; however, Tokyo was not making any promises. On December 18, Canadian PolOff Catherine Boucher, who attended the force generation conference, told PolOff that only Switzerland had offered forces, namely special operations forces; she questioned whether the Swiss had proper training for maritime operations. Canada, she

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said, was not currently planning to offer a ship, although she said it was not necessarily ruled out. In addition to seeking force contributions, the Secretariat's Lenoir on December 10 also said the EU was trying to coordinate with Russia and Saudi Arabia, short of official participation.

¶4. (C//NF) The agreed upon Rules of Engagement for ATALANTA are detailed, robust and address the detention of persons and the use of force as the EU's maritime operation evolves. The detention of persons is contemplated, although the ROE also notes, "Identification of the legal framework for enactment of this ROE and exact procedure to follow will be promulgated under separate cover," likely a reference to the not-yet-finalized arrangements with third countries in the region. The use of force to rescue pirate victims is approved by the flag state and Operations Commander; however, approval by national authorities is not necessary. Additionally, the use of disabling fire and opposed boarding (when armed resistance is expected) can be authorized by the Operations Commander, although the Operations Plan does not specify the tools available for opposed boarding operations.

#### Legalities Still Unresolved

¶5. (C) Council Secretariat and Member State contacts stress that the legalities of the anti-piracy mission are not entirely resolved. Lenoir described four problem areas: the authorization to enter states' territorial waters, status of forces agreements (SOFAs), embarking armed personnel on merchant ships, and dealing with persons under control (PUCs). On territorial waters, the EU has secured agreements from Kenya and Djibouti to pursue pirates in their waters, and would do so in Somali waters under the authority of UN resolutions. Lenoir said Yemen was reluctant to allow the EU to operate in its territorial waters, insisting on its own sovereign responsibility. As for SOFAs, Lenoir lamented that EU lawyers were insisting on agreements with every country where the EU would place even one military official, but said that agreements with Kenya and Djibouti were almost complete.

As for embarking personnel on merchant vessels, Lenoir said the EU would need waivers of responsibility from the ship owners as well as from the flag state, agreements that would probably have to be negotiated by Member States individually. Member States are still discussing this issue in committee.

the most difficult. Member States are seeking an EU framework, but this would be difficult because of jurisdiction issues and EU concerns about human rights conditions in states that receive captured pirates. He described two possible options. In the first, Member States would take jurisdiction over the pirates their forces captured. Not all Member States are keen on this idea, especially since some no longer have piracy laws. Sweden and the Netherlands indicated to USEU on December 18 that they would probably have to prosecute captured pirates in their national court systems, rather than hand them over to regional states. The second option Lenoir described would be to deliver PUCs to coastal states, but he said this would require a transfer of jurisdiction agreement with those states and some guarantee of human rights standards. When PolOff suggested calling on the UN convention on the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Lenoir insisted that the receiving state would have to have existing legal procedures for prosecuting pirates, something Djibouti, for instance, has only for its territorial waters, not the high seas. (Comment: USEU cannot verify this description of Djibouti's anti-piracy laws. End Comment.) The Spanish mission's Jose Gomez Acebo, speaking frankly, told PolOff that a common EU solution to the PUC issue is "not going to happen" and that individual Member States would have to decide how to deal with captured pirates. UK First Secretary Duncan McCombie, on the other hand, told PolOff on December 16 that the UK had already secured a bilateral agreement with Kenya that allows the UK to deliver pirates to the Kenyan Government. London is now working to expand the agreement to allow other ATALANTA contributors to hand pirates over to Kenya. Lamenting that the French government seemed to be more concerned with the political victory of launching the operation under the French EU Presidency than with sorting out the legalities, he acknowledged that Paris is now pursuing an agreement with Djibouti. USEU understands from other Member State contacts that the EU is also pursuing an agreement with Tanzania.

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